

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Thomas Kennedy,
Appellant,

v.

Mills County Board of Review,
Appellee.

ORDER

**Docket Nos. 12-65-0281 to 0284,
0286 & 0294 to 0296**

On April 22, 2014, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Attorney Jordan Glaser of Peters Law Firm, PC in Council Bluffs, Iowa represented Appellant Thomas Kennedy. Attorney Brett Ryan of Watson & Ryan, PLC in Council Bluffs, Iowa represented the Board of Review at hearing. The Appeal Board ruled Exhibits 1-13 offered by the Appellant were excluded because they were both untimely and were requested, but not provided to supplement the initial discovery responses. Board of Review Exhibit A was also excluded as untimely. Appellee's Exhibit A was also excluded as untimely. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Thomas Kennedy, owner of eight parcels of residential property located in the Pony Creek Development in rural Mills County, Iowa, appeals from the Mills County Board of Review decisions reassessing his property. The appeals on these parcels were consolidated for hearing.

Kennedy protested to the Board of Review on the ground that the properties were assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2). His petitions to the

Board of Review sought reduced assessments. The Board of Review granted the petitions, in part, and reduced the assessments of all Kennedy's land assessments by 5% in addition to the adjustments previously applied by the Assessor as listed below.

Docket	Parcel	Topography	Economic	Other	BOR Adjustment
12-65-0281	03239-000	5%	20%		5%
12-65-0282	03240-000	5%	20%		5%
12-65-0283	03241-000	5%	20%		5%
12-65-0284	03242-000	0%	20%		5%
12-65-0286	03244-000	20%	0%		5%
12-65-0294	03254-000	50%	50%		5%
12-65-0295	03282-000			\$ (12,000)	5%
12-65-0296	03198-000	35%	25%		5%

Kennedy then filed his appeals with this Board and claimed the same ground and relief. The following chart provides information on each parcel.

Docket	Parcel	Lot	Acres	Assessed Value	Board of Review Value	Appellant Value
12-65-0281	03239-000	4	0.460	\$18,838	\$17,896	\$7,500
12-65-0282	03240-000	5	0.551	\$19,299	\$18,334	\$7,500
12-65-0283	03241-000	6	0.658	\$19,807	\$18,817	\$7,500
12-65-0284	03242-000	7	0.589	\$17,136	\$16,279	\$4,000
12-65-0286	03244-000	11	0.613	\$17,280	\$16,416	\$7,500
12-65-0294	03254-000	28	0.462	\$7,068	\$6,715	\$2,500
12-65-0295	03282-000	19	0.297	\$18,500	\$16,975	\$6,778
12-65-0296	03198-000	22	0.509	\$12,067	\$11,464	\$7,500

Appraiser Jeanne McDonald testified on behalf of Kennedy. McDonald reviewed Multiple List Service (MLS) land sales in the area. (Exhibit 14). She is also familiar with each parcel owned by Kennedy and described the features of each. McDonald's testimony regarding these unimproved parcels on private roads is summarized below:

Lot 4 (Docket 12-65-0281) – McDonald testified this lot of bare ground is flat by the road then slopes severely to a drainage ditch. It has no septic system and is serviced by a community well to the

south. This parcel is located on a dirt road approximately three miles from pavement. In her opinion, it would need grading to make it useable.

Lot 5 – (Docket 12-65-0282) – McDonald describes this lot of bare ground as also on a dirt road three miles from pavement. It would need a septic and to obtain water service through a community well. The parcel slopes slightly, but is buildable in her opinion.

Lot 6 – (Docket 12-65-0283) – This parcel is described as fairly level and elevated in the rear. McDonald considers it buildable.

Lot 7 – (Docket 12-65-0284) – McDonald does not consider this lot buildable because of its irregular topography. Two easements, one for road access and one for a septic field for Lot 8 run through the lot.

Lot 11 – (Docket 12-65-0286) – This lot is located between two improved lots. The lot gently slopes from the street then has a severe increase in elevation, in her opinion, creating drainage issues. She considers it buildable but it would require work. McDonald believes the listing price would need to be adjusted downward due to the drainage and septic issues.

Lot 19 – (Docket 12-65-0295) – This lot lacks access to utilities. It is steep and drains into a creek. In her opinion, in order to build on this lot, it would need scrub trees removed and considerable dirt work to level the parcel.

Lot 22 – (Docket 12-65-0296) – This parcel slopes down to the south and southeast. In McDonald's opinion it is buildable, but is at the bottom of a hill and partly below street level. Due to the slope and elevation, the property may have drainage problems and health/safety issues created by standing water and mosquitos.

Lot 28 – (Docket 12-65-0294) – McDonald reports this lot slopes down from the road to a silt bed. Three-quarters of the lot is in a flood zone and the rest is too steep to use. The only access is

through an adjacent property. In her opinion, it is not buildable because the useable portion is too small to accommodate a house and septic system due to setback requirements.

While McDonald provided a description of each subject parcels, ultimately she did not offer an opinion of value for the parcels under appeal.

Kennedy provided additional information about four of the lots listed above, as well. He believes these deficiencies reduce the fair market value of the parcels.

Lot 7 – He believes the easements on this lot make it unbuildable, worthless “dead” ground.

Lot 11 – This lot has two wells on its upper level that serves the north end of the community. The wells are owned by the homeowners’ association and were constructed under the terms of an easement. He does not consider this parcel buildable. Kennedy explained it did not pass perk testing, except for the area where the wells are located.

Lot 19 – According to Kennedy, this lot has been on the market for twenty years with an asking price of \$4000 to \$5000 without offers. He reports the lot has scrub trees, a ravine, and gullies in a flood plain. Kennedy does not believe a house and septic system would fit on this lot.

Lot 22 – Kennedy describes this lot as a bowl which is four to five foot lower than the road. He estimates it would cost \$8000 to \$9000 to fill with dirt, which he believes would not be cost efficient.

Lot 28 – He describes this lot as a swamp with cliffs all around that cannot accommodate a house or a septic system.

County Assessor Christina Govig reported that Vanguard completed the county reappraisal in 2013. The properties were adjusted in the initial assessments for topography and economic obsolescence. Govig testified that economic obsolescence was applied because of the parcels’ location in the county. Subsequently, the Board of Review applied an additional 5% obsolescence to all these parcels.

Govig reviewed the land sales identified by McDonald on the MLS summary. (Exhibit 14). According to her, approximately six of the sales had abnormal sale conditions such as sale by an exempt church, foreclosure, adjacent land purchase, and split out of a divided property. McDonald admitted that the May 2009 sale was questionable, but she was not aware of any others being distress sales.

The MLS sales occurred between 2009 and 2011. Parcel sizes ranged from 1.00 acres to 35.63 acres. Sale prices ranged from \$1250 per acre to \$16,071 per acre. Focusing on only the 2011 sales, sale prices ranged from \$4439 per acre to \$14,218 with a median of \$7500 per acre; however, they ranged in size from 2.11 acres to 35.63 acres in size. It is questionable whether these properties are comparable to the subject properties that average roughly one-half acre. We note that the price per-square-foot of a property, all else being equal, will decrease as a property's size increases. *See APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE* pp. 40 (13th ed. 2008) (discussing the law of decreasing returns). McDonald conceded larger parcels generally sell for less per acre than larger parcels and that the smallest sale property of 2.11 acres sold in March 2011 for \$30,000. Therefore, comparing larger parcel sales to Kennedy's the smaller lots, without adjustment, would likely undervalue the subject properties. Some of the sales may have not been normal, arm's length transactions according to Govig. Additionally, the sales data is unadjusted to account for the difference between the sale properties and the appeal properties. For these reasons, we give this evidence no consideration.

This Board recommends the Assessor explore combining parcels of unbuildable, encumbered lots with adjoining parcels for the next reassessment as provided in Iowa Code section 428.7. Section 428.7 provides that "descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit." *See Sevde v. Bd. of Review of Ames*, 434 N.W.2d 878, 880 (Iowa 1989)

(stating that “the assessor [has] some discretion to aggregate separately described tracts for valuation purposes.”).

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm’s-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of properties in abnormal transactions not reflecting market value must not be taken into account, or must be adjusted to eliminate the effect of factors, which distort market value, including . . . foreclosure or other forced sales. § 441.21(1)(b). The property’s assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

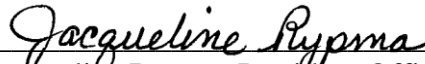
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the

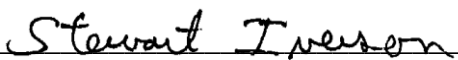
subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

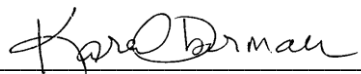
While Kennedy presented evidence of unimproved land sales, the Appeal Board has several concerns about the sales. Many were the sales dated and some may have not been arm's length transactions. In addition, the parcels were considerably larger than Kennedy's lots and it is questionable whether these properties are comparable to Kennedy's parcels. Finally, the sale prices were not adjusted to account for differences between his lots and the sale properties. In summary, we determine the preponderance of the evidence does not support Kennedy's claims of over-assessment.

The Appeal Board orders the assessments of the subject properties as determined by the Mills County Board of Review, as of January 1, 2013, are affirmed.

Dated this 15th day of May, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

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